

*United States Court of Appeals
for the Second Circuit*



APPENDIX

75-6041

Original

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

B
Pls

JOHN L. BEATTIE, JR.

Appellant

v.

UNITED STATES OF AMERICA and
DONALD M. CERRA, Special Agent
of the Internal Revenue Service,

Appellees

Docket No. 75-6041

JOINT APPENDIX



PAGINATION AS IN ORIGINAL COPY

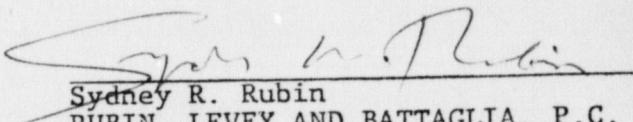
UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

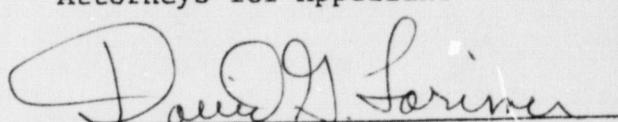
JOHN L. BEATTIE, JR.,)
Appellant)
v.)
UNITED STATES OF AMERICA and)
DONALD M. CERRA, Special Agent)
of the Internal Revenue Service,)
Appellees)

Docket No. 75-6041

STIPULATION RE JOINT APPENDIX

IT IS HEREBY STIPULATED AND AGREED by counsel for the parties in the above entitled appeal that annexed hereto is the Joint Appendix prepared by said counsel for purposes of said appeal.


Sydney R. Rubin
RUBIN, LEVEY AND BATTAGLIA, P.C.
950 Crossroads Building
2 Main Street East
Rochester, New York 14614
Attorneys for Appellant


David G. Larimer
Assistant United States Attorney
United States Courthouse
Rochester, New York 14614

Dated: June 30 , 1975

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

JOHN L. BEATTIE, JR.,)
Appellant)
v.)
UNITED STATES OF AMERICA and) Docket No. 75-6041
DONALD M. CERRA, Special Agent)
of the Internal Revenue Service,)
Appellees)

)

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

Misc Civ.

D. C. Form No. 106 Rev.

TITLE OF CASE

UNITED STATES OF AMERICA and
 DONALD M. CERRA, Special Agent
 of the Internal Revenue Service

v.

JOHN L. BEATTIE, JR.

ATTORNEYS

For plaintiff:

U.S. Attorney

For defendant:

Sydney R. Rubin, Esq.
 Rubin, Levey and Battaglia, P.C.
 950 Crossroads Building
 2 Main Street East
 Rochester, New York 14614

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed	Clerk				
J.S. 6 mailed	Marshal				
Basis of Action: IRS contempt	Docket fee				
	Witness fees				
Action arose at:	Depositions				

Misc. Civ.

DATE 1975	PROCEEDINGS	Date Order Judgment
Jan. 14	Filed order to show cause & petition & affidavit why respondent should not be compelled to obey IRS summons ret. 1-27-75-Burke, DJ	F-16
14	Filed Mar. ret. on OTSC served on John L. Beattie, Jr. on 1-10-75	
14	Filed defts. answer to petition to enforce IRS summons.	
22	Filed defts. affidavits in support of answer to petition to enforce Internal Revenue Service Summons.	
27	Order to show cause re IRS summons. To be submitted 2 wks from today.	
May 19	Filed order overruling respondent's answer. The summons will be enforced. The respondent shall appear pursuant to the summons at the Intelligence Division, Room 509, 100 State Street, Roch. N.Y. on 6-3-75 at 10am-Burke, DJ Notice & copies to U.S. Atty. & Sydney R. Rubin	F-16
20	Filed respondents notice of motion for an order staying an order of the Ct. made on 5-16-75 overruling respondents claims of privilege under the 5th Amendment etc. ret. 5-27-75	
27	Filed Respondent's Notice of Appeal (copy mailed to U.S. Attorney and to Clerk, CCA with copy of docket entries; CCA's Forms C and L mailed to Mr. Rubin)	
27	Return date of motion--stay denied but date for appearance before IRS extended to 6/17/75	
June 23	Filed transcript of proceedings on 1/27/75	
23	" transcript of proceedings on 5/27/75	

Attic
-1(a)-

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and)
DONALD M. CERRA, Special Agent)
of the Internal Revenue Service,)
Petitioners)
v.) CIVIL ACTION NO.
JOHN L. BEATTIE, JR.,)
Respondent)

ORDER TO SHOW CAUSE

Upon the Petition, the Exhibits attached thereto, the Affidavit of Special Agent Donald M. Cerra, Internal Revenue Service, and upon the Motion of John T. Elvfin, United States Attorney for the Western District of New York, it is

ORDERED that John L. Beattie, Jr., appear before the United States *U.S. Court House, Rochester, New York* District Court for the Western District of New York, in the court room presided over by the undersigned, on the 27 day of Jan. 1975, at 10 o'clock in the fore noon to show cause, if any he has, why he should not be compelled to obey the Internal Revenue Summons served upon him on September 13, 1974. It is further

ORDERED that a copy of this Order, together with the Petition and Exhibit and Affidavit attached thereto, be served upon John L. Beattie, Jr., on or before the 15 day of Dec., 1975. It is further

ORDERED that the respondent John L. Beattie, Jr., shall file a written response to the petition within five (5) days after service of the Petition upon him.

Dated at Rochester, New York this 7 day of Jan. 1975.

C. M. C. D. R. S. G.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and)
DONALD M. CERRA, Special Agent)
of the Internal Revenue Service,)
Petitioners)
v.) CIVIL ACTION NO.
JOHN L. BEATTIE, JR.,)
Respondent)

PETITION TO ENFORCE INTERNAL REVENUE SUMMONS

The United States of America and Donald M. Cerra, Special Agent of the Internal Revenue Service, by their attorney, John T. Elfvin, United States Attorney for the Western District of New York, show unto this Court as follows:

I

This is a proceeding brought under the authority of Sections 7402(b) and 7604(a) of the Internal Revenue Code of 1954 to obtain judicial enforcement of an Internal Revenue Summons.

II

The petitioner, Donald M. Cerra, is a Special Agent of the Internal Revenue Service, employed in the Intelligence Division of the Office of the District Director of Internal Revenue in Rochester, New York.

III

The respondent, John L. Beattie, Jr., resides at 49 Shoreham Drive, Rochester, New York, within the jurisdiction of this Court.

IV

The petitioner, Donald M. Cerra, is conducting an investigation for the purpose of ascertaining the federal income tax liabilities of John L. Beattie, Jr., for the years 1968 through 1972, inclusive.

V

The respondent, John L. Beattie, is in possession and control of papers and documents concerning the above-described investigation.

VI

On September 13, 1974, an Internal Revenue Service Summons, a copy of which is attached hereto as Exhibit A, was issued by the petitioner, Donald M. Cerra, directing the respondent, John L. Beattie, Jr., to appear before the said Donald M. Cerra, on September 23, 1974 at 10:00 a.m., at Room 509, 100 State Street, Rochester, New York, to testify and to produce for examination books, records and other papers, all of which are fully described in the summons attached hereto as Exhibit A. A copy of this summons was personally served on John L. Beattie, Jr., on September 13, 1974, as is set out in the Affidavit of the petitioner, Donald M. Cerra, attached hereto as Exhibit B.

VII

On September 23, 1974, the respondent, John L. Beattie, Jr., appeared but refused to comply with the summons by testifying or by producing the books, records and other documents demanded in the summons. The respondent's refusal to comply with the summons continues to date as is set forth in the Affidavit of Donald M. Cerra, attached hereto as Exhibit B.

VIII

It was and is now essential to the determination of the correct tax liability of John L. Beattie, Jr., for the years 1968 through 1972, inclusive, that the respondent be required to appear and produce the documents, records and other information sought in the summonses and to give testimony regarding those documents and records as is evidenced by the Affidavit of Donald M. Cerra which is attached hereto as Exhibit B.

WHEREFORE, the petitioners, the United States of America and Donald M. Cerra, respectfully pray:

1. That this Court enter an Order directing the respondent, John L. Beattie, Jr., to show cause, if any he has, why he should not comply with and obey the summons attached hereto as Exhibit A in each and every requirement thereof;
2. That this Court enter an Order directing the respondent, John L. Beattie, Jr., to obey the summons attached hereto as Exhibit A in each and every requirement thereof by ordering the attendance and production of the records as is required and called for by the terms of the summons before the petitioner, Donald M. Cerra, or any other proper officer of the Internal Revenue Service, at such time and place as hereafter may be fixed by the petitioner, Donald M. Cerra, or any other proper officer of the Internal Revenue Service, and by ordering the respondent, John L. Beattie, to appear for the purpose of giving testimony;
3. That the United States recover its costs in maintaining this action; and
4. That this Court grant such other and further relief as it deems just and proper.

John T. Elfvion
JOHN T. ELFVIN
United States Attorney

By: *Asst/Donald G. Larimer*
Assistant United States Attorney

Of Counsel:

GERALD C. MILLER
Trial Attorney
Tax Division
United States Department of Justice
Washington, D. C. 20530

Summons



Department of the Treasury
Internal Revenue Service
P.O. Box 3015
Federal Station
Rochester, N.Y. 14614

In the matter of the tax liability of
John L. Beattie Jr.
49 Shoreham Drive
Rochester, New York

Internal Revenue District of Buffalo

Period(s) 1968 through 1972

The Commissioner of Internal Revenue

To John L. Beattie Jr.
49 Shoreham Drive
At Rochester, New York

Greetings You are hereby summoned and required to appear before

Special Agent Donald M. Cerra
an officer of the Internal Revenue Service, to give

testimony relating to the tax liability or the collection of
the tax liability of the above named person for the period(s)
designated and to bring with you and produce for
examination the following books, records, and papers at
the place and time hereinafter set forth:

All original workpapers of Arthur Robeson, C.P.A. which are in your
possession and were used in the preparation of Form 1040 U.S. Individual
Income Tax Return of John L. Beattie Jr. and Margaret Beattie for the
years 1968, 1969, 1970, 1971 and 1972 consisting of but not limited to
the following: trial balances, balance sheet, adjusting entries, closing
entries, workpapers, notes, memorandums and any correspondence used in
the preparation of the aforementioned returns.

Place and time for appearance:

at Intelligence Division, Room 509, 100 State Street, Rochester, New York

on the 23rd day of September, 19 74 at 10:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States commissioner or magistrate to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of the Internal Revenue Code

this 13th day of September, 19 74

Original

Donald M. Cerra
Signature

Special Agent

Title

Form 2039 (Rev. 2-74)

3
EXHIBIT A

Form 4326 (Rev. 5-71)

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and)
DONALD M. CERRA, Special Agent)
of the Internal Revenue Service,)
Petitioners)
v.) CIVIL ACTION NO.
JOHN L. BEATTIE, JR.,)
Respondent)

AFFIDAVIT

STATE OF NEW YORK) ss
COUNTY OF MONROE)

DONALD M. CERRA, a petitioner herein, being first duly sworn,
deposes and says:

1. That he is a duly commissioned Special Agent of the Internal Revenue Service with a post of duty in Rochester, New York, and performing his duties under the District Director of Internal Revenue.
2. That in his capacity as a Special Agent he was assigned to investigate the federal income tax liabilities of John L. Beattie, Jr., for the years 1968, 1969, 1970, 1971 and 1972.
3. That pursuant to such investigation and in accordance with Sections 7602 and 7603 of the Internal Revenue Code of 1954, he served a Summons, Treasury Form 2039, upon John L. Beattie, Jr., on September 13, 1974, by personally handing a copy of the summons to John L. Beattie, Jr. The Summons which is attached to this Petition and made a part hereof (Exhibit A) directed John L. Beattie, Jr., to appear before your affiant on the 23rd day of September, 1974, at 10:00 a.m., at Room 509, 100 State Street, Rochester, New York, then and there to give testimony and to produce certain records relating to the tax liabilities of John L. Beattie, Jr., for the years 1968, 1969, 1970, 1971 and 1972.

EXHIBIT "B"

4. That the respondent, John L. Beattie, Jr., appeared before your affiant at the time and place directed by the Summons but refused to comply with the further terms of said Summons and such refusal continues to the date of this Affidavit.

5. That the testimony and documents demanded by the Summons served upon the respondent, John L. Beattie, Jr., are necessary for the determination of the federal income tax liabilities of John L. Beattie, Jr., for the years 1968, 1969, 1970, 1971 and 1972.

Further your affiant saith not except that this Affidavit is in support of a Petition to Enforce an Internal Revenue Summons issued to John L. Beattie, Jr.

I, Donald M. Cerra
DONALD M. CERRA
Special Agent, Intelligence Division
Internal Revenue Service

Sworn to and subscribed before me this 30th day of December,
1974.

James C. Wood
Notary Public

My commission expires: March 30, 1976

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and)
DONALD M. CERRA, Special Agent)
of the Internal Revenue Service,)
Petitioners)
v.) CIVIL ACTION NO.
JOHN L. BEATTIE, JR.,)
Respondent)

ANSWER TO PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONS

The Respondent, John L. Beattie, Jr., by his attorney, Sydney R. Rubin, answers the Petitioners' Petition in the above-entitled proceeding, as follows:

1. Admits that the proceeding is brought under §§7402(b) and 7604(a) of the Internal Revenue Code of 1954, but denies the remaining allegations of Paragraph 1 of the Petition.
2. Admits the allegations of Paragraph 2 of the Petition.
3. Admits the allegations of Paragraph 3 of the Petition.
4. Admits that Petitioner, Donald M. Cerra is conducting an investigation with respect to the income taxes of John L. Beattie, Jr. for the years 1968 through 1972, inclusive, but denies the remaining allegations of Paragraph 4 of the Petition.
5. Admits the allegations of Paragraph 5 of the Petition.
6. Admits the allegations of the first sentence of Paragraph 6 of the Petition, and admits that a copy of the summons was personally served on John L. Beattie, Jr. on September 13, 1974, but denies the remaining allegations of the second sentence of Paragraph 6 of the Petition.
7. Admits that the Respondent appeared on September 23, 1974 and refused to testify or to produce the books, records and other documents demanded in the summons except to assert his pri-

vilege against self-incrimination under the Fifth Amendment to the United States Constitution, and admits that such refusal continues to date. Denies the remaining allegations of Paragraph 7 of the Petition.

8. Denies the allegations of Paragraph 8 of the Petition.

For further answer to the Petition herein, Respondent alleges:

9. Upon information and belief, the principal duty of Petitioner Donald M. Cerra, in his capacity as Special Agent of the Internal Revenue Service, is to conduct investigations in cases of suspected income tax fraud and, where he deems it appropriate, to recommend criminal prosecution in such cases.

10. Upon information and belief, Petitioner Donald M. Cerra is and has been conducting an investigation with respect to the Respondent for the principal purpose of determining whether to recommend that criminal prosecution be instituted against the Respondent with respect to the tax returns filed by Respondent for the years 1968 through 1972, inclusive.

11. The books, records and other papers sought by the summons a copy of which is attached to the Petition as exhibit "A", are the property of the Respondent and are in his lawful possession, and have been his property and in his lawful possession for a long and continuous period of time prior to the service of said summons upon him.

12. The Respondent has a privilege under the Fifth Amendment of the United States Constitution, and has properly asserted said privilege, to decline to give testimony and/or to produce for examination the books, records and other papers, demanded by said summons.

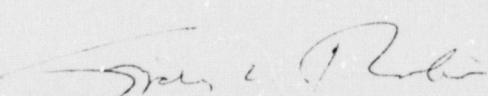
13. In response to said summons, the Respondent appeared before the said Donald M. Cerra on September 23, 1974, with his attorney, Sydney R. Rubin, and personally and by his said attorney,

declined to give testimony and/or to produce for examination the books, records and other papers sought by said summons, under the Fifth Amendment of the United States Constitution on the ground that, to do so, might tend to incriminate him, all as set forth in the Affidavit of Sydney R. Rubin, his attorney, attached hereto as exhibit "A".

14. Respondent, John L. Beattie, Jr., by his attorney, does now hereby reassert his privilege under the Fifth Amendment of the United States Constitution to decline to give such testimony and/or to produce such documents, as demanded in the summons, on the ground that, to do so, might tend to incriminate him.

15. As a further and independent ground for Respondent's refusal to comply with said summons, Respondent alleges that the summons is over-broad, lacks the specificity required by law, and that the documents demanded therein are not reasonably necessary to said investigation.

WHEREFORE, the Respondent, John L. Beattie, Jr., respectfully prays that this Court enter an order denying the relief sought in the Petition and dismissing the same, and grant to Respondent such other and further relief as this Court deems just together with his costs in this proceeding.


Sydney R. Rubin
Rubin, Levey and Battaglia, P.C.
950 Crossroads Building
Rochester, New York 14614
Attorneys for Respondent.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and)
DONALD M. CERRA, Special Agent)
of the Internal Revenue Service,)
Petitioners)
v.) CIVIL ACTION NO.
JOHN L. BEATTIE, JR.)
Respondent)

AFFIDAVIT

STATE OF NEW YORK)
ss.:
COUNTY OF MONROE)

Sydney R. Rubin, being duly sworn, deposes and says:

1. I am an attorney, duly licensed to practice in the State of New York and in this Court, and have offices at 950 Crossroads Building in the City of Rochester, New York. I am the attorney for the Respondent in the above-entitled proceeding.

2. I was retained by the Respondent, John L. Beattie, Jr., as his attorney, on or about January 12, 1974, to represent him as his attorney in connection with an investigation of his federal income tax affairs being conducted by Donald M. Cerra, Special Agent of the Internal Revenue Service. On or about September 13, 1974 the Respondent delivered to me a summons served upon him on that date by Petitioner, Donald M. Cerra, a copy of which is attached to the Petition in this proceeding as exhibit "A". At the same time, the Respondent informed me that the records and documents described in said summons were in his personal possession and had so been in his personal possession for a long and continuous period of time prior to the service of said summons upon him, and that he regarded the same as his personal property.

3. Based upon my information concerning the nature of the duties of a Special Agent of the Internal Revenue Service, and my

EXHIBIT "A"

previous discussions and contacts with Special Agent Donald M. Cerra in the course of this investigation, I concluded that there was a reasonable probability that said Special Agent might recommend that criminal proceedings be instituted against the Respondent with respect to his tax returns under investigation, and I so informed and advised the Respondent.

4. Pursuant to the summons, Respondent appeared with me, as his attorney, at the place and time stated in the summons, before Petitioner, Special Agent Donald M. Cerra. In response to a question by Special Agent Cerra, the Respondent acknowledged that the documents and records described in the summons were in his possession, but stated that, acting upon my advice, he had declined to bring them with him for examination. I then stated, as attorney for Respondent, that he was declining to testify, or to produce for examination said documents and records described in the summons, pursuant to his privilege under the Fifth Amendment of the United States Constitution on the ground that, to do so, might tend to incriminate him. The Respondent then personally and on my advice stated that he was asserting his privilege under the Fifth Amendment of the United States Constitution and was declining to give testimony or to produce the records and documents described in the summons on the ground that, to do so, might tend to incriminate him. James W. Richards, another attorney of Respondent, and Special Agent Nick Como of the Internal Revenue Service, were also present at this time. The Special Agents of the Internal Revenue Service did not ask the Respondent to give any further testimony at this time.

Sydney R. Rubin
Sydney R. Rubin

Sworn to and subscribed before me
this 1st day of January, 1975.

Stephen L. Raymond
Notary Public

STEPHEN L. RAYMOND
Notary Public in the State of New York
MONROE COUNTY, N.Y.
Commission Expires March 30, 1976

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and)
DONALD M. CERRA, Special Agent)
of the Internal Revenue Service,)
Petitioners)
v.) CIVIL ACTION NO.
JOHN L. BEATTIE, JR.,)
Respondent)

AFFIDAVIT

STATE OF NEW YORK) ss.:
COUNTY OF MONRCE)

John L. Beattie, Jr., being duly sworn, deposes and says:

1. I am the Respondent in the above entitled proceeding.
2. On or about January 9, 1974 Donald M. Cerra, Special Agent of the Internal Revenue Service, and another revenue agent, called on me at my office in Rochester, New York. They showed me their Internal Revenue Service badges and stated that they had been assigned to investigate my federal income tax returns for the years 1968 or 1969 through 1972. At the same time, to the best of my recollection, Special Agent Cerra informed me that he was investigating the possibility of criminal fraud, and advised me that I had a constitutional right to remain silent and to retain counsel.
3. On or about January 18, 1974, James W. Richards, Esq., acting as my attorney and on my behalf, and with my knowledge and consent, requested that my accountant, Arthur W. Robeson, deliver to Mr. Richards, for delivery to me, various work papers, trial balances, and schedules which Mr. Robeson had prepared as the accountant for me and for my business, Canteen Vending Company of Rochester, a sole proprietorship. On or about the same day, Mr. Richards delivered said papers to me, and the same have been in my continuous possession since that time and now are in my possession.

Said papers are among those described in the summons issued under date of September 13, 1974, a copy of which is annexed to the Petition in this proceeding as Exhibit "A".

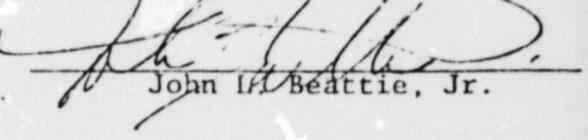
4. At the time Mr. Richards delivered said papers to me, it was my understanding and intent that, inasmuch as I had paid Mr. Robeson for the preparation of these papers, together with other accounting services, I was entitled to have them as my sole property and that they therefore constituted my sole property; and this is still my understanding and intent at this time.

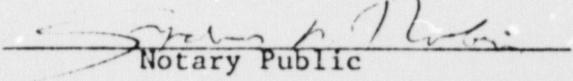
5. On or about January 12, 1974 I retained Sydney R. Rubin, Esq. to represent me as my attorney in connection with the tax investigation being conducted by Special Agent Donald M. Cerra. Following the service upon me of said summons, and in response thereto, I appeared at the offices of Special Agent Donald M. Cerra on September 23, 1974, accompanied by my attorneys Sydney R. Rubin and James W. Richards. At that time, and upon the advice of my attorney, Sydney R. Rubin, I stated to Special Agent Donald M. Cerra and Special Agent Nick Como, who was also present, that I was asserting my privilege under the Fifth Amendment of the United States Constitution and was declining to give testimony or to pro-

and Special Agent Nick Como, who was also present, that I was asserting my privilege under the Fifth Amendment of the United States Constitution and was declining to give testimony or to produce the records and documents described in the summons on the ground that, to do so, might tend to incriminate me. I hereby re-assert said privilege under said Fifth Amendment on the same grounds.

6. In so asserting my privilege under the Fifth Amendment of the United States Constitution, and declining to produce said records and documents, it was and is my understanding, based upon the statements made to me by Special Agent Cerra as described in paragraph 2 above and advice given to me by my attorneys, that said investigation might result in a recommendation by Special Agent Cerra that criminal proceedings be instituted against me with respect to my tax returns for the years being investigated.

Sworn to and subscribed before
me this 17th day of January, 1975.


John I. Beattie, Jr.


Notary Public

SYDNEY R. RUBIN
NOTARY PUBLIC, State of N. Y., Monroe Co.
My Commission Expires March 30, 1975

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and)
DONALD M. CERRA, Special Agent)
of the Internal Revenue Service,)
Petitioners)
v.) CIVIL ACTION NO.
JOHN L. BEATTIE, JR.,)
Respondent)

AFFIDAVIT

STATE OF NEW YORK)
ss.:
COUNTY OF MONROE)

Arthur W. Robeson, being duly sworn, deposes and says:

1. I am a Certified Public Accountant with offices at 907 Wilder Building in the City of Rochester, New York. In that capacity I was the accountant for John L. Beattie, Jr. of Rochester, doing business as Canteen Vending Company of Rochester, a proprietorship.

907 Wilder Building in the City of Rochester, New York. In that capacity I was the accountant for John L. Beattie, Jr. of Rochester doing business as Canteen Vending Company of Rochester, a proprietorship.

2. On or about January 18, 1974, Mr. Beattie's attorney, James W. Richards, Esq., requested that I deliver to him certain work papers which I had prepared for Mr. Beattie and said business. Mr. Richards stated that he was making this request on behalf of Mr. Beattie and that he intended to turn these papers over to Mr. Beattie.

3. Since Mr. Beattie had paid me for my accounting services, including the preparation of these papers, I felt that he was entitled to have them if he so desired. I had no need for the papers and have not since had any need for them. Accordingly, in compliance with his request, I delivered to Mr. Richards, for delivery to Mr. Beattie, the papers requested, relating to the years 1969 through 1972.

Sworn to before me this
11 day of January, 1975.

Arthur H Robeson

Arthur Robeson

Jean M. Mech

NOTARY PUBLIC
State of N.Y., Monroe County
My Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES and DONALD M. CERRA,
Special Agent of the Internal Revenue
Service,

Petitioners

- vs -

JOHN L. BEATTIE, JR.,

Respondent

David G. Larimer
Assistant United States Attorney
for petitioners

Sydney R. Rubin
2 Main Street East
Rochester, N.Y. 14614
Attorney for respondent

By order dated January 7, 1975 this court directed that the respondent show cause before this court on January 27, 1975 why he should not be compelled to obey the Internal Revenue summons served upon him on September 13, 1974. The respondent on January 14, 1975 filed his answer. The matter came on for argument before this court and was submitted by the parties on written memoranda. On due consideration it is hereby

ORDERED that the respondent's claims of privilege under the Fifth Amendment and respondent's further grounds for refusal to comply with the summons, as set forth in

respondent's answer, are overruled. The summons will be enforced. The respondent shall appear pursuant to the summons at the Intelligence Division, Room 509, 100 State Street, Rochester, New York, on the 3rd day of June, 1975, at 10:00 A.M.

Harold P. Burke
HAROLD P. BURKE
United States District Judge

May 16, 1975.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and)
DONALD M. CERRA, Special Agent)
of the Internal Revenue Service,)
Petitioners) Misc. Civil
v.)
JOHN L. BEATTIE, JR.,)
Respondent)

NOTICE OF MOTION

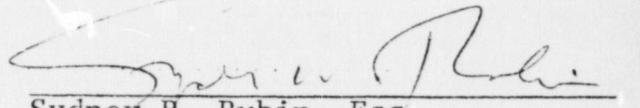
PLEASE TAKE NOTICE, that upon the affidavit of Sydney R. Rubin, Esq., sworn to the 19th day of May, 1975, a copy of which is hereto annexed, and upon the Petition, Answer, and all other proceedings heretofore had herein, the undersigned will move this Court at a motion calendar thereof, to be held at the United States Courthouse, Rochester, New York, on the 27th day of May, 1975 at 10:00 in the forenoon, or as soon thereafter as counsel can be heard, for an Order:

1. Staying an order of this Court made on May 16, 1975 overruling the Respondent's claims of privilege under the Fifth Amendment and directing that the Respondent appear pursuant to summons at the Intelligence Division on June 3, 1975 at 10:00 a.m., such stay to continue until the United States Supreme Court shall have decided the appeals presently pending before it in United States v. Kasmir, 499 F. 2d 444 and United States v. Fisher, 500 F. 2d 683, and until further order by this Court;

2. In the alternative, staying said order of this Court made on May 16, 1975, directing enforcement of said summons, pending appeal by Respondent to the United States Court of Appeals

for the Second Circuit from said order of this Court made May 16, 1975, until said Court of Appeals shall have made and entered its decision on said appeal and until further order by this Court.

Dated: May 19, 1975



Sydney R. Rubin, Esq.
RUBIN, LEVEY AND BATTAGLIA, P.C.
950 Crossroads Building
2 Main Street East
Rochester, New York 14614
Telephone: (716) 546-1398
Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and) DONALD M. CERRA, Special Agent) of the Internal Revenue Service,) Petitioners) v.) JOHN L. BEATTIE, JR., Respondent) Misc. Civil
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AFFIDAVIT

I, SYDNEY R. RUBIN, being duly sworn depose and say:

I am an attorney at law and am the attorney for John L. Beattie, Jr., the Respondent in the above-entitled proceeding.

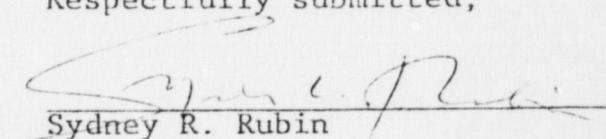
The only issue in this proceeding is whether the Respondent had a privilege under the Fifth Amendment with respect to certain papers in his possession. On or about January 30, 1975, the United States Supreme Court granted certiorari in the cases of United States v. Kasmir, 499 F. 2d 444, (C.A. 5th) and United States v. Fisher, 500 F. 2d 633 (C.A. 3rd). It appears probable that the decision of the Supreme Court in said cases will resolve the issue in the present case.

It is my belief that, if the Respondent is required to produce the papers described in the summons on June 3, 1975, as directed in this Court's Order of May 16, 1975, his Fifth Amendment rights may be irrevocably compromised and violated, even if the Supreme Court subsequently decides the issue before it in accordance with Respondent's contentions herein. The Respondent may be seriously prejudiced if he is required to disclose what the Supreme Court may hold is privileged.

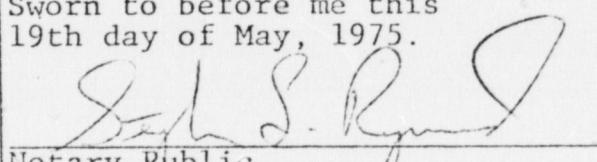
On the other hand, it does not appear that the interests of the United States would be substantially prejudiced if a stay, pending the Supreme Court resolution of this issue, is granted. The affidavit of Special Agent Donald M. Cerra, annexed to the Petition, states that he has been assigned to investigate the income tax liabilities of Respondent for the years 1968 through 1972. The statute of limitations for criminal prosecution in tax evasion cases is generally six years from the date the return was filed. Section 6531 I.R.C. Accordingly, although the statute has now apparently expired for 1968, it will remain open for 1969 until at least April 15, 1976; and for the subsequent years involved, until well after the Supreme Court is likely to decide the cases pending before it.

In the alternative, the motion asks that this Court stay its order pending disposition of an appeal to the United States Court of Appeals for the 2nd Circuit. Respondent has not yet filed an appeal, because he is first making this motion. However, the undersigned attorney assures this Court that if the motion for a stay pending the Supreme Court decision is denied, he will immediately file an appeal and prosecute it diligently. Accordingly, if the motion for stay pending the Supreme Court decision is denied, it is respectfully requested that the alternative relief be granted -- namely, a stay pending disposition of appeal to the Court of Appeals for the 2nd Circuit, so that Respondent's rights will not be prejudiced.

Respectfully submitted,


Sydney R. Rubin
Counsel for Respondent

Sworn to before me this
19th day of May, 1975.



Notary Public

STEPHEN L. RAYMOND

Notary Public in the State of New York
MONROE COUNTY, N.Y.
Commission Expires March 30, 1976

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and DONALD M. CERRA, Special Agent of the Internal Revenue Service,)
Petitioners)
v.)
JOHN L. BEATTIE, JR.,)
Respondent)
	Misc. Civil

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN, that John L. Beattie, Jr., the Respondent above named, hereby appeals to the United States Court of Appeals for the Second Circuit from an order of this Court made and entered on May 16, 1975 overruling the Respondent's claims of privilege under the Fifth Amendment, directing that a summons served upon him on September 13, 1974 be enforced, and directing Respondent to appear pursuant to said summons. This appeal is taken from each and every part of said order.

s/ Sydney R. Rubin

Sydney R. Rubin, Esq.
RUBIN, LEVEY AND BATTAGLIA, P.C.
950 Crossroads Building
2 Main Street East
Rochester, New York 14614
Telephone: (716) 546-1398
Attorneys for Respondent

Dated: May 23, 1975